

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Careywood, ID Contract Postal Unit
Careywood, ID 83809

Docket No. A2015-2

**UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS
AND RESPONSE IN OPPOSITION TO PETITIONER'S
APPLICATION FOR SUSPENSION**
(March 27, 2015)

This matter commenced when the Postal Regulatory Commission (Commission) received a petition alleging that the Commission's jurisdiction under 39 U.S.C. § 404(d) extends to an appeal of a contract renewal decision concerning contract number 2DCPAC-15-B-0007, which governs operation of the Careywood, ID contract postal unit (CPU).¹ As the Postal Service has consistently maintained in this and other dockets, the scope of section 404(d)(5) is limited to discontinuance of Postal Service operated "Post Offices" and does not apply to operations related to contractor-operated retail facilities, which are not owned or operated by the Postal Service. Since Ms. Newsam Banks' (Petitioner) appeal concerns a contractual matter involving the contract governing the operation of a CPU, an event that falls outside the scope of 39 U.S.C. § 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal.

¹ Petition for Review Received from Marrion E. Newsam Banks Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015). Petitioner filed an errata to her appeal on March 24, 2015. The Commission also received several letters from postal customers. See Letter Received from Mark Glenn Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015); Letter Received from Emily Palmer Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015); Letter Received from Nova Jo Kellogg, PRC Docket No. A2015-2 (March 23, 2015); and Letter and Petition from Senator Mike Crapo Regarding the Careywood, Idaho Post Office, PRC Docket No. A2015-2 (March 25, 2015).

FACTUAL BACKGROUND

Careywood is located in Bonner County in the state of Idaho. On June 1, 1974, the Careywood, ID Post Office became Careywood, ID Community Post Office (CPO). On June 2, 2014, the contractor informed the Postal Service of his intention to terminate the contract effective August 1, 2014.

In September 2014, the Postal Service awarded an emergency, fixed term contract (contract number 2DCPAC-15-B-0007) to Ms. Caroline Bartelt to operate the retail facility as a contract postal unit (CPU). On February 23, 2015, the Ms. Bartelt received notification that the emergency contract would not be renewed and that under the terms of the contract, it would expire on March 31, 2015.

On February 20 and 21, 2015, customer notifications were posted and customer letters were placed in Post Office Boxes which informed customers of the pending expiration of the Careywood, ID CPU contract on March 31, 2015. The notifications and customer letters also informed customers that Post Office Box replacement service would be offered at the Athol Post Office, approximately seven miles away (according to Google Maps, Athol Post Office is a seven minute drive from the Careywood, ID CPU). If postal customers elect to maintain their Post Office Box at the Athol Post Office, then their mailing address and their Post Office Box fees will remain the same.

In addition to receiving retail service at the Athol Post Office, customers may also obtain retail services, such as Post Office Box service, at the nearby

Sagle, Cocollala, and Bayview Post Offices and through usps.com. See Exhibit 1 (listing from usps.com). Additionally, Careywood, ID CPU customers are eligible to receive service by carrier delivery.

ARGUMENT

As an initial matter, Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d) because the petition requests the Commission to review a contract renewal decision concerning a contract governing the operation of a CPU. Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract.² Accordingly, a contract renewal decision concerning a contract governing the operation of a CPU does not fall within the Commission's section 404(d) jurisdiction.

1. 39 U.S.C. § 404(d) Does Not Apply to Contract Postal Units.

Section 404(d) provides that an appeal under that section must concern a "closing" of a "post office."³ Consistent with United States Postal Service Handbook PO-101, a discontinuance occurs only from action directed toward a "Postal Service-operated retail facility."⁴ The definition of "Postal Service-operated retail facility" specifically excludes a CPU.⁵ Comparatively, the definition of "contractor-operated retail facility" specifically excludes any retail

² 39 U.S.C. § 404(d).

³ *Id.*

⁴ Handbook PO-101 at Appendix A.

⁵ 39 C.F.R. § 241.3(a)(2)(i) ("USPS-operated retail facility' . . . does not include any station, branch, community post office, or other retail facility operated by a contractor.")

facility operated by a Postal Service employee.⁶ Thus, the regulations are explicit in distinguishing between Postal Service-operated retail facilities and CPUs, and they eliminate any confusion regarding whether a contractor-operated retail facility, including a community Post Office, is subject to section 404(d).

Petitioner argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 as part of its contract renewal decision concerning the contract governing the operation of the Careywood CPU.⁷ But, as described above, the Postal Service had no obligation to follow these procedures because its decision concerned a contract by which a third-party contractor offered retail services. For purposes of 39 U.S.C. § 404(d), a discontinuance is limited to “ending operations at a Post Office, classified station, or classified branch.”⁸ The term “discontinuance” does not extend to operations at a CPU.⁹ Thus, this appeal does not concern the discontinuance of a Post Office subject to Title 39.

2. Even Under the “Sole Source” Standard, 39 U.S.C. § 404(d) Does Not Apply to Careywood, ID CPU Because Postal Customers are Served by Nearby Post Offices and Alternate Methods of Access.

As argued above, the Postal Service has consistently interpreted 39 U.S.C. § 404(d) as applying to Post Office discontinuance. However, the Commission has recently relied on decisions by the Postal Rate Commission that interpret “Post Office” more broadly. Specifically, in *Knob Fork*, the Postal Rate

⁶ 39 C.F.R. § 241.3(a)(2)(ii) (“‘Contractor-operated retail facility’ includes any . . . community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.”)

⁷ Petition for Review Received from Marrion E. Newsam Banks Regarding the Careywood, ID Post Office, PRC Docket No. A2015-2 (March 19, 2015).

⁸ United States Postal Service Handbook PO-101 Section 233.1.

⁹ *Id.*

Commission applied discontinuance requirements because the community Post Office was the “only retail postal facility serving the community.”¹⁰

Using this standard, the Commission recently considered whether it has jurisdiction to review a Postal Service decision to terminate a contract governing the operation of a community Post Office. In *Alplaus, NY*, the Commission dismissed a similar appeal in which a postal customer petitioned the Commission to apply section 404(d) to a decision to terminate a contract governing the operation of the Alplaus, NY Community Post Office.¹¹ The Postal Service had provided notice of its decision to terminate the contract governing the operation of the contractor-operated retail facility, and the availability of service at a nearby Post Office, Rexford Post Office, which was located approximately one mile away (approximately five minutes driving time).¹² Since Alplaus, NY postal customers were served by the nearby Rexford Post Office and had numerous other retail service options available to them, the Commission determined that section 404(d) did not apply under the *Knob Fork* “sole source” standard.

Even under the “sole source” standard established by the Postal Rate Commission in *Knob Fork*, Petitioner failed to allege facts sufficient for the application of 39 U.S.C. § 404(d). As explained above, Careywood, ID CPU is not a Post Office or even a postal-operated retail facility. Additionally, like in *Alplaus, NY*, the Careywood, ID CPU is not the “only retail postal facility serving the community.” Here, the Athol Post Office is located within a seven minute

¹⁰ Commission Order Remanding Determination for Further Consideration, Postal Rate Commission Docket No. A83-30 (January 18, 1984).

¹¹ PRC Order No. 1293, Order Dismissing Appeal, PRC Docket No. A2012-88 (March 21, 2012).

¹² *Id.* at 6.

drive from the Careywood, ID CPU. In addition, Careywood, ID CPU customers are eligible for service by carrier delivery, which provides them with both 24-hour access to their mail, and a wide range of retail services available from the carrier.

Furthermore, as noted by then Commissioner Taub, the Postal Service has made considerable strides in providing increased access to retail postal services. Since *Knob Fork*, new forms of access have emerged and consumers can now access retail services through a myriad of methods, including traditional Post Offices, contract postal units, rural and highway carriers, Village Post Offices, Self-Service Kiosks, Approved Shippers, USPS.com, and consignment stamp retailers. Methods by which postal customers may access retail services have improved to the point where then Commissioner Taub wrote separately to express his misgivings about the “continued viability of the *Knob Fork* decision.”¹³

3. Strong Policy Reasons Support the Postal Service’s Position that the Commission Lacks Jurisdiction to Consider the Appeal of a Contract Renewal Decision Concerning its Contract with a Third-Party CPU Operator.

The procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation.¹⁴ The Postal Service’s ability to negotiate reasonable contractual terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties had the option of appealing contractual decisions. A third party, the Commission, would essentially become a party to contract negotiations, injecting more complexity into the contract negotiation process. In

¹³ Order No. 1293, Concurring Opinion of Commissioner Taub, at 1.

¹⁴ See 76 Fed. Reg. 41416-41417, Section I (July 14, 2011).

many situations, applying the section 404(d) procedures to CPU contract decisions would provide contractors with a bargaining advantage over the Post Office, and force the Postal Service to continue operating a contract even where sound business judgment supports termination. This imbalance in bargaining power would arise most acutely where a CPU operator is the only person in the community capable of operating the CPU. Because the participation of the CPU operator would be necessary to perform the analysis required by section 404, a CPU operator could prevent the Postal Service from satisfying section 404 by refusing to cooperate, or it could extort money from the Postal Service in exchange for cooperation.

APPLICATION FOR SUSPENSION

On March 24, 2015, Petitioner filed an errata to her appeal.¹⁵ In that pleading, Petitioner requests that the Commission suspend the effectiveness of the Final Determination to close or consolidate a Post Office during the pendency of the appeal. However, the requested relief is not available because there is no Final Determination for the Commission to suspend. Rather, Petitioner requests that the Commission order the Postal Service to renew its contract with the operator. This relief is not available under section 404(d)(5).

Additionally, the Postal Service investigated the facts pertaining to the Careywood, ID CPU; the relief requested by Petitioner is not practicable to implement at this late stage and would significantly frustrate postal operational plans. The Postal Service has already made numerous arrangements to

¹⁵ Errata to Petition for Review Received from Marrion E. Newsam Banks, PRC Docket No. A2015-2 (March 24, 2015).

implement its decision regarding renewal of the contract to operate the Careywood, ID CPU, including the following:

- Provided notice to the provider of the expiration of the contract, in accordance with the terms of the contract;
- Arranged for the premises to be vacated in a timely fashion with all postal owned equipment removed; and
- Scheduled various operational changes to coincide with the expiration of the Careywood, ID CPU contract on March 31, 2015.

Thus, Postal Service operational plans for an efficient transition would be frustrated and costly if the Commission were to grant the requested relief. Also, postal customers were given notice of the pending change, and some have made and scheduled their own adjustments to accommodate their needs to send and receive mail based on the contract expiration.

For the reasons set forth above, Petitioner's Application for Suspension should be denied.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno

Chief Counsel

Global Business & Service Development

Laura Zuber

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6036; Fax -6279
March 27, 2015

Exhibit 1

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0.3 mi	CAREYWOOD › 455689 HIGHWAY 95 CAREYWOOD, ID 83809-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	8:15am - 12:00pm 1:00pm - 5:00pm 8:15am - 9:15am Closed
5.5 mi	BAYVIEW › 20157 E PERIMETER RD BAYVIEW, ID 83803-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	8:45am - 12:00pm 1:00pm - 4:45pm 8:30am - 10:00am Closed Lot Parking Available
6.5 mi	ATHOL › 5900 E HIGHWAY 54 ATHOL, ID 83801-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	9:00am - 12:00pm 1:00pm - 5:00pm 9:00am - 11:00am Closed Lot Parking Available
8.2 mi	COCOLALLA › 31 COCOLALLA LOOP RD COCOLALLA, ID 83813-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat-Sun	9:00am - 12:00pm 1:00pm - 4:30pm Closed Lot Parking Available
11.5 mi	LACLEDE › 163 RILEY CREEK PARK RD LACLEDE, ID 83841-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat-Sun	9:30am - 12:15pm 1:00pm - 4:15pm Closed Lot Parking Available
12.6 mi	SAGLE › 468665 HIGHWAY 95 SAGLE, ID 83860-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	8:45am - 12:00pm 1:00pm - 5:00pm 10:00am - 12:00pm Closed Lot Parking Available
12.6 mi	SPIRIT LAKE › 6087 W MAINE ST SPIRIT LAKE, ID 83869-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	8:30am - 1:00pm 2:00pm - 5:00pm 11:00am - 12:00pm Closed Lot Parking Available
15.0 mi	DOVER › 304 JACKSON AVE DOVER, ID 83825-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	9:30am - 1:00pm 1:30pm - 4:00pm 10:30am - 12:30pm Closed Lot Parking Available
17.2 mi	PRIEST RIVER › 43 TREAT ST PRIEST RIVER, ID 83856-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat-Sun	8:30am - 5:00pm Closed Lot Parking Available
17.6 mi	SANDPOINT › 204 N 4TH AVE SANDPOINT, ID 83864-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	8:30am - 5:00pm 11:00am - 1:00pm Closed Lot Parking Available
17.9 mi	BLANCHARD › 425 RAILROAD AVE BLANCHARD, ID 83804-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri Sat Sun	8:15am - 12:30pm 1:00pm - 4:30pm 8:30am - 10:30am Closed Lot Parking Available

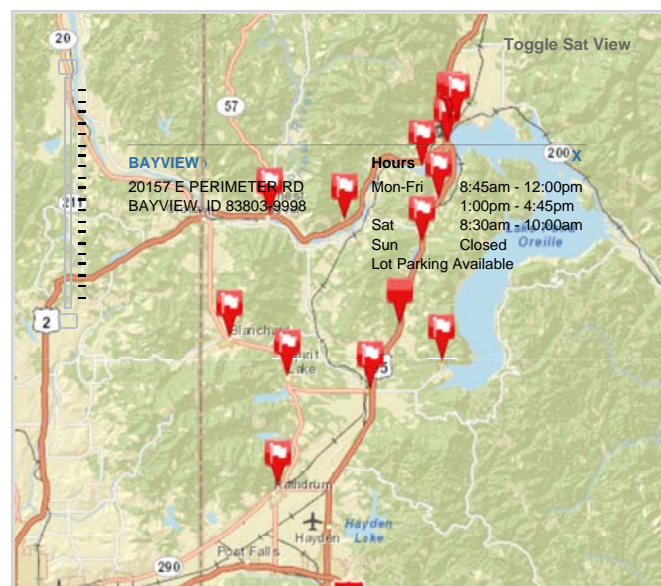






Exhibit 1

DIST	LOCATION	HOURS
 19.5 mi	STAPLES › 260 BONNER MALL WAY PONDERAY, ID 83852-9748 800-ASK-USPS® (800-275-8777)	Stamp booklets only.
 19.5 mi	RATHDRUM › 13867 W HIGHWAY 53 RATHDRUM, ID 83858-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri 9:00am - 5:00pm Sat-Sun Closed Lot Parking Available
 19.9 mi	WAL-MART SUPERCENTER › 476999 HIGHWAY 95 PONDERAY, ID 83852-9738 800-ASK-USPS® (800-275-8777)	Stamp booklets only.
 19.9 mi	PONDERAY › 296 4TH ST PONDERAY, ID 83852-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri 8:00am - 1:00pm 2:00pm - 5:00pm Sat 8:00am - 11:00am Sun Closed Lot Parking Available

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